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SIPDIS

DEPARTMENT FOR SA, SA/INS, INR/NESA

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TAGS: [PGOV](#) [PTER](#) [PINR](#) [PHUM](#) [PREF](#) [CE](#) [KWMM](#) [LTTE](#)

SUBJECT: Sri Lanka: Background on federalism proposals

Refs: Colombo 1107, and previous

1. (U) Despite the serious problems that the peace process has faced of late (see Refrels), there is still much talk of federalist-related solutions to the conflict between the GSL and the Liberation Tigers of Tamil Eelam (LTTE). At this point, the current positions of the government and the LTTE on federalism remain vague, with the two sides currently focused more on the related issue of how to form an interim administrative structure in the north/east. That said, in terms of a longer range solution to the conflict, both sides have said they support the implementation of federalist arrangements in the north/east within a unified Sri Lanka.

2. (U) As background on the complex issues involved in any discussion of this subject in the context of Sri Lanka, Mission provides the attached briefer on previous federalism proposals that have been made in the course of the conflict. These proposals stretch back to those made during the Thimpu talks in 1985 and include those contained in the 1987 Indo-Sri Lankan Accord, as well as more recent constitutional devolution proposals made by President Kumaratunga and her People's Alliance party.

3. (U) Mission's background piece on previous Sri Lankan federalism proposals follows:

Begin text:

#### SRI LANKAN FEDERALISM PROPOSALS:

>> (A) 1985 - THIMPU: In 1985, peace talks were held in Thimpu, the capital of Bhutan. The Thimpu talks were the first set of peace talks held since the advent of the ethnic conflict in 1983. India sponsored the talks. Four principles were placed before the GSL by six Tamil organizations, including the LTTE. The Tamil groups wanted to amend the 1978 Sri Lanka Constitution and its "unitary state" provisions to encompass the following four points:

Sri Lanka must:

- Recognize Sri Lankan Tamils as a distinct entity;
- Recognize an identified Tamil homeland and guarantee its territorial integrity;
- Recognize the inalienable right of self-determination of the Tamil entity within this homeland; and,
- Recognize the right to full citizenship and other fundamental democratic rights of all Tamils.

The first three principles were rejected by the GSL on the grounds that they undermined the "unitary" character of the Sri Lankan state.

>> (B) 1987 - INDO-SRI LANKAN ACCORD AND 13th AMENDMENT: The 13th Amendment of the Sri Lankan constitution gave effect to the devolution provisions of the Indo-Sri Lankan Accord signed in July 1987 by President J. R. Jayawardene and Indian Prime Minister Rajiv Gandhi. Once it signed the accord, the GSL pushed the 13th amendment through Parliament.

The 13th Amendment sought to devolve power to newly instituted provincial councils throughout Sri Lanka, including a newly amalgamated northern and eastern provincial council. It contained three lists detailing the following matters: the areas of government devolved to the provinces (List I); the powers retained at the center (the Reserved List, or List II); and a Concurrent List (List III) of shared functions which were ultimately controlled by Parliament. The 13th Amendment included the following key provisions:

- In addition to Sinhala, Tamil would also be an official language of Sri Lanka with English as a link language.
- The north and east would be merged into one province subject to a referendum.

- Provincial councils would be elected every five years.
- The president would appoint an executive-type governor for each province.
- Provincial high courts would be established.
- Financial provisions would be directed by Parliament.
- Decisions of the provincial councils could be superseded by regulations promulgated by the President under the Public Security Ordinance.

Soon after the Indo-Sri Lankan accord was signed, the LTTE made clear that it would not cooperate with the Indian government. The situation degenerated as fierce fighting erupted in the north and east between the LTTE and the Indian Peacekeeping Force (IPKF), and between the GSL and the radical JVP in the south. In this situation, the proposed national referendum providing for a merged north and east never took place. Councils in other provinces, however, were elected in November 1988.

>> (C) 1991 - PREMADASA PROPOSALS: In August 1991, under President Premadasa's guidance, a joint parliamentary select committee was established to explore ways of achieving peace and political stability in Sri Lanka. Mangala Moonesinghe, the current Sri Lankan high commissioner to India and then-Sri Lanka Freedom Party (SLFP) MP, was appointed to chair the committee.

The interim report of the select committee was released in January 1993. The report included the following main points:

- The establishment of two separate units of administration for the northern and eastern provinces;
- The adoption of a scheme of devolution on lines similar to those of the Indian constitution;
- The devolution of more powers in List III (Concurrent List of shared functions) of the 13th Amendment.

The Tamil parties, including the LTTE, did not endorse the report, complaining that it did not devolve enough powers to a north/east unit. Due to such criticism, the report was never put before Parliament as a bill.

>> (D) 1994/95 - PA'S FIRST DEVOLUTION PROPOSAL: The new People's Alliance (PA) government led by President Kumaratunga held peace talks with the LTTE from late 1994 through early 1995. The government used the talks to discuss confidence-building measures such as the lifting of embargoes, the rehabilitation of the north and east, including the restoration of electricity supplies. The GSL said it was also keen to move forward on the framework of a political solution that provided that elections would be held in the north and east on whether the two areas should be merged. The government's devolution proposals were never fleshed out fully, but it was leaning toward giving a north/east unit at least as many rights, if not more, than were to be given under the terms of the Indo-Sri Lankan Accord and the 13th amendment. In the end, the talks failed, with the LTTE re-commencing the war in April 1995.

>> (E) 1999/ 2000 - PA'S SECOND DEVOLUTION PROPOSAL: After several trial balloons, the PA went on to propose a new devolution package in 1999-2000.

Under the devolution proposals, a new constitution was to replace the existing 1978 constitution. The key features of the proposal were the deletion from the 1978 Constitution of the following key points:

- (i) Article 2, which states that Sri Lanka is a unitary state; and,
- (ii) Article 76, which prohibits Parliament from abdicating its legislative powers and from setting up any authority with any legislative powers.

Consequent to the deletion of the clause referred to at "i" above, the existing unitary state was to be replaced by a federation described as an "indissoluble union of regions."

Also, consequent to the deletion of the clause referred to at "ii" above, Sri Lanka was to be divided into an unspecified number of regions (believed to be 8 or 9) to which Parliament would abdicate major legislative powers plus executive and judicial powers. Two of these

regions, the northern and eastern, were to be merged.

Article 5 of the proposed constitution (in contrast to the 1978 Constitution) would include a Tamil-language translation of the national anthem.

In addition, the government proposed that Sri Lanka would have two vice presidents from different communities with each such community being different from the community of which the president was a member.

In August 2000, President Kumaratunga's People's Alliance party presented these proposals to Parliament in a bill. Despite a favorable response from the minority parties, the new constitution was heavily criticized by the then-Opposition United National Party (UNP). (Note: The UNP won the December 2001 parliamentary elections and is now in power.) Never approved, the bill automatically lapsed when the Parliament was dissolved in August 2000, a few days prior to the expiry of its six-year term.

End text.

14. (U) Minimize considered.

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